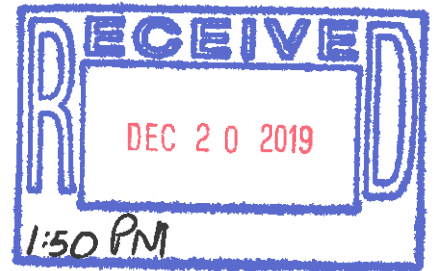


Zoning Board of Adjustment
229 Main Street
Nashua, NH 03060
Attn.: Carter Falk
December 20, 2019



RE: Appeal of Planning Board Decision on Site Plan for 1 Hardy Street; Linatsas Family Trust (Owner); Ali Bird (Applicant).

I. Standard and Reasons for Appeal

Abutters, Clayton and Georgette Alexander of 1 Amherst Ter, are filing this appeal regarding the approval by the Planning Board on November 21, 2019 of the site plan for 1 Hardy Street, Linatsas Family Trust (Owner), Ali Bird (Applicant). Pursuant to RSA 676:5, III, "If, in the exercise of subdivision or site plan review, the planning board makes any decision or determination which is based upon the terms of the zoning ordinance, or upon any construction, interpretation, or application of the zoning ordinance, which would be appealable to the board of adjustment if it had been made by the administrative officer, then such decision may be appealed to the board of adjustment under this section." Since this decision is based in part the construction, interpretation, or application of zoning ordinances, it must first be appealed to the Zoning Board of Adjustment ("ZBA") prior to an appeal to superior court.

The approved site plan does not comply with the zoning ordinances. The fenced in outdoor dog area is an accessory use and an accessory structure. The ordinances require that the area: must be located on the same lot as the principal business (190-264); must have a 20 foot setback from adjoining property lines (190-16); and comply with screening and buffer requirements (190-181).

From the beginning of this case, the Planning Department and the ZBA have struggled over how to classify this outdoor dog area under the ordinances. The classification has never been adequately clarified for purposes of the site plan. At first, the area was considered an outdoor display area under 190-52A. Then the ZBA decided the case never should have been heard in the first place. The ZBA left it up to the Planning Board to determine the applicability of 190-52 to the site plan. The Planning Board decided that 190-52 does not apply because ZBA decided that the use as a dog day care is permitted in the Use Matrix. However, the Planning Board did not address other requirements for the site plan that ensure that the permitted use is constructed in such a way that it fits into the area in which it is being constructed.

190-52C, D and F have lot, setback, and screening and buffer restrictions specifically applicable to a site plan for outdoor display areas. A variance under 190-52A was granted, and now apparently has been vacated. Although the ZBA and Planning Board now deem this ordinance no longer applicable, these requirements are not uniquely limited to outdoor display areas under 190-52. They merely repeat similar requirements found in other ordinances,

specifically in the definitions of terms in 190-264, Definitions; 190-31, Accessory Uses and Structures; 190-16, Dimensional Regulations; and 190-181, Screening and Buffers.

II. The Outdoor Dog Area Cannot Be Located on the Residential Lot

The property at 1 Hardy Street is divided into two lots which comprise 1 and 3 Hardy Street. The residential home, driveway, and a small one car garage are located on one lot. The two car garage converted into a commercial building for office space is located on the second lot. The lot dividing line runs between the small garage and driveway, and the office building and front parking area. Historically, one lot has always been used residentially, and the other lot commercially. The house will continue to be used residentially. The Planning Board staff report states, "The existing house on the lot would be used as a residential unit."

The ZBA and Planning Board decided based on an inaccurate site plan map. It fails to show the deeded property lines on Amherst Ter, and fails to show the 1 Hardy Street two lot lines and their respective residential and commercial uses. At the October 17 Planning Board hearing, the Applicant's engineers were asked to do due diligence and return with the correct information. They did not do so. Since 190-52F was not considered applicable, the Planning Board did not factor the two lots or the setback into their decision, although the issue was raised at the hearings.

The site plan map is identical to the GIS map, describing the property as Sheet 62, Lot 152. According to the 1 Hardy Street deed, the property consists of two separate lots, numbered 40 and 41 on Plan 128. The deed is the controlling legal description of the property, not the zoning map or the GIS map, as the GIS disclaimer makes clear. The zoning ordinance in 190-264 defines "lot" as: "An area or parcel of land or any part thereof, not including water area, in common ownership, designated on a plan filed with the Administrative Officer by its owner or owners as a parcel to be used, developed or built upon as a unit under single ownership or control." The two lots are parts of a parcel of land in common ownership considered as a unit for the purpose of transferring legal title from one person to another by the deed. In addition to the deed, the two lots are also distinguishable by their historically separate residential and commercial uses. They are also distinguishable by the previous variances from 1983 and 1987 which only permitted commercial use as a chiropractic office in that building and specifically prohibited use of the residence for business. The Applicant will continue these separate uses.

The outdoor dog area is an accessory use incidental and subordinate to the principal use and structure of the commercial building for dog day care and boarding. By definition, as an accessory use, the area must be located on the same lot as the principal structure: 190-264 states: "Use, Accessory: A use incidental and subordinate to the principal use of a structure or lot, or a use not the principal use, which is located on the same lot as the principal structure."

The proposed fenced in outdoor dog area spans and encloses almost half of both lots. The vast majority of the area is the rear yard on the residential lot. The commercial lot has no rear yard behind its building, only a narrow pathway approximately 6 ft. wide. There is a small area perhaps 20 x 20 feet between one side of the building and the one car garage. The front of

the building is the paved parking area. The outdoor dog area can only use this considerably smaller area of the property around the commercial building.

Even if 1 Hardy Street is considered as one zoning or GIS lot instead of the two deeded lots, there are still two different uses. If there is more than one use on one lot, then all zoning requirements must be met for both residential and commercial uses. No ordinance or previous variance permits the residence and its lot to be used commercially.

III. The Outdoor Dog Area Requires a Setback from the Property Lines

Since the outdoor dog area is an accessory use, the fenced in part is necessarily an accessory structure under the ordinances. The precedent for this case, Chewie's Playland on 217 West Hollis, required a variance under 190-52A for an identical fenced in outdoor dog area. Chewie's fenced in area functions as an accessory use and accessory structure attached to the principal building. The area use and structure at 1 Hardy Street are substantially similar.

The 1 Hardy Street site plan merely utilizes the existing residential fencing and fills in a few gaps. However, this is not being used as a typical residential screening fence. It is a commercially used dog run for bathroom and exercise purposes being utilized throughout the day and night. The urban chicken ordinance discusses similar animal runs. 190-31.1C(8) states: "The coop and any run must be located in side or rear yards and cannot be located within 20 feet of a property line." The chicken run is distinct from any residential fence and cannot occupy the entire yard. A similar setback for a commercial dog run is perfectly reasonable.

190-264 defines "Structure, accessory: A detached structure, the use of which is customarily incidental and subordinate to that of the principal use, principal building or principal structure, and which is located on the same lot as that occupied by the principal use, principal building or principal structure." The outdoor dog area is clearly an accessory structure incidental and subordinate to the principal use and building. Again, an accessory structure must be located on the principal business lot.

As an accessory use and structure, the outdoor dog area must comply with the requirements of 190-31, Accessory Uses and Structures. The definition of "structure" in 190-264 includes both a building and a fence: "Structure: A combination of materials for occupancy or use, such as a building, ... fence, sign or the like. *[Comment: Compare "building."]*" 190-31 applies to accessory structures like fences and accessory buildings since they are equivalent terms and uses. The difference is an accessory building is a structure with a roof.

The fenced in outdoor dog area will be attached to all three buildings on the property, enclosing the residence, one car garage, and commercial building, and used only in conjunction with the commercial building. 190-31A(1) states that in commercial districts, a detached accessory building shall comply with specific dimensional standards. A "detached" structure requires a minimum side or rear setback of 6 feet. For an "attached" structure, 190-31A(2) states: "An accessory building attached to the principal building shall be considered an integral part thereof and shall be subject to front, side and rear yard requirements applicable to the

principal building.” The fence is being attached to the commercial building as an attached accessory structure which is “an integral part” of the principal building.

The setback requirements for an LB District are set forth in 190-16E, Setbacks (Dimensional Matrix, Columns G through K). The Dimensional Matrix, Table 16-3, Column K requires a Minimum Rear Setback of 20 feet. Again, this is similar to 190-52C which requires an outdoor display area to be setback 20 feet from an adjoining property line.

190-16H states: “Rear setbacks shall be measured from the rear property line.” The rear property line of 1 Hardy Street adjoins a two foot tract on the southwesterly side of Amherst Ter that is deeded to all the propertyholders on that street. All the properties on Hardy Street have no rear entrance or exit onto Amherst Ter. The rear yard does not abut the street and is not in the City right-of-way, so the setback cannot be measured from there. The rear fence is only setback approximately one foot from the rear property line.

Whether considered a detached or attached accessory structure, there is a minimum rear setback requirement of 6 or 20 feet. In addition, there are similar minimum side setback requirements of 6 or 20 feet in 190-31 and 190-16, Table 16-3, Column K. These rear and side setback requirements further restrict where the outdoor dog area may be located.

IV. The Outdoor Dog Area Does Not Meet Screening and Buffer Requirements

The homes on Amherst Ter are in a residential R-A district and share a boundary with a nonresidential LB district. Site plan approval criteria in 190-146D(17) states: “Landscaping shall conform to the requirements of Article XXVII.” This Article includes 190-181, Screening and Buffers. 1 Hardy Street must meet these requirements. The purpose section states: “These requirements are intended to preserve, protect, and restore the quality of life and property values for residential neighborhoods that share a boundary with a nonresidential district.... All buffers shall be provided on the premises within the nonresidential district immediately adjacent to a residential district boundary.”

190-181A, Applicability, states: “(1) Screening and buffers are required for: (a) Any lot in any industrial or commercial district that abuts a residential district; or (b) Any use allowed in any industrial or commercial district that abuts a residential district. (2) Structures, pavement, utility construction, signage and similar hardscape improvements shall not be permitted to encroach on any buffer unless specifically permitted by the Planning Board.” The screening and buffer requirements apply to any lot and any use. The structure cannot encroach on the buffer.

190-181B(1), Required buffers, states: “The buffer is intended to be landscaped and improved in order to provide effective visual screening on a year-round basis for uses in residential districts at a boundary with a nonresidential district. Buffers shall employ existing vegetation, or nursery stock, or both, as well as fences, walls, earth berms, or grade changes, in accordance with these standards. These standards are intended to create a dense or opaque screen for the first six feet above the ground elevation of the residential district immediately

adjacent to the district boundary, and a semiopaque screen from the sixth to 30th foot above that ground elevation.” There is no landscaping or fencing on the site plan that provides a semiopaque screen from 6 to 30 feet above the ground. 1 and 3 Amherst Ter and 7 Hardy Street can all view unscreened the outdoor dog area from their second story house windows.

According to Table 181-1, the required buffer yard for an LB district adjoining R-A is Buffer Type B. Table 181-2 states that Buffer Type B requires minimum plant materials spanning a minimum width of 15 feet, 2 large trees, 2 medium/small trees, 20 shrubs, and an optional fence or wall. There are some plant materials along the rear fence facing Amherst Ter. However, the site plan map fails to show them at all. The existing plant materials are only 2 small trees, 3 evergreen shrubs, and 3 grass shrubs along the residential portion of the rear fence, with nothing along the commercial portion. The landscaping does not meet the minimum buffer yard requirements.

190-181B(4), Fences and walls, states: “The required fence or wall shall be solid or opaque, at least six feet in height, and shall be installed parallel to, and for the entire length of the district boundary. Where a buffer containing a fence has been established on one side of a residential district boundary, a fence may not be used to fulfill this requirement on the side of the district boundary which is directly opposite such a fence or wall.” The rear fence runs parallel to the entire length of the rear side of the district boundary. The site plan is to fill gaps in the rear fence and add a front fence connecting the house, the small garage, and the commercial building. This front fence may not be used to fulfill this requirement because it is on the side of the district boundary directly opposite the rear fence.

190-181D, Buffer Use Restrictions, states: “Buildings, impervious surfaces, and parking, as well as the storage and display of vehicles, goods, and materials, are prohibited within the buffers required pursuant to this section.” Similar to 190-52, this is a reference to outdoor storage and display of goods. While 190-52 may not be applicable, the outdoor dog area is for commercial use. The purpose of 190-80 is to screen and buffer commercial uses, structures, and goods from adjoining residential districts. Any commercial outdoor area is meant to be separate from the buffer. Here the fenced in outdoor dog area not only encroaches on the required buffer, it is identical to the buffer. The buffer and the use and structure cannot be the same.

190-181F, Implementation of the Buffer Requirements, states: “Where lots abutting a residential district boundary have been previously developed, the standards and requirements of this section shall be implemented at such time as a change in use classification occurs...”. The use classification has been changed from a chiropractic office to a dog day care and boarding business. Any previous buffer requirements for 1 Hardy Street no longer apply. The new site plan must now meet all the requirements of 190-181.

IV. Conclusion

The site plan approved by the Planning Board does not comply with the terms of the zoning ordinances. As such, the decision is illegal and unreasonable. The fenced in outdoor dog

area is an accessory use and an accessory structure. It must be located on the same lot as the principal business use and building. It must meet the setback requirements. It must meet the screening and buffer requirements. Just because the outdoor dog area is considered to be an accessory use to a primary permitted use does not mean that these other requirements do not still apply to the site plan. The use of the property as a dog day care is a separate and distinct issue apart from the construction and location of the outdoor dog area according to the site plan.

The ZBA left it up to the Planning Board to regulate and restrict the outdoor dog area. The site plan fails to do so. We request that the ZBA determine that the site plan must comply with the lot, setback, and screening and buffer requirements of the ordinances.

Respectfully submitted by Clayton and Georgette Alexander, 1 Amherst Ter.

Return to:
David & Steven Linatsas, Trustees
Linatsas Family Trust
10 Edgewood Avenue
Nashua, NH 03064

Quitclaim Deed

I, **David Linatsas**, married, of 10 Edgewood Avenue, Nashua, County of Hillsborough, State of New Hampshire for consideration paid

Grant to

David Linatsas and Steven Linatsas, Trustees of the Linatsas Family Trust, having a mailing address of 10 Edgewood Avenue, Nashua, County of Hillsborough, State of New Hampshire

With Quitclaim Covenants:

A certain tract of land situated in Nashua, County of Hillsborough, State of New Hampshire, bounded and described as follows:

Beginning at a stone bound at the intersection of Amherst and Hardy Streets, thence running southwesterly on said Hardy Street about one hundred and thirty (130) feet to the northeasterly line of lot numbered forty-two (42) on a plan new number one hundred and twenty-eight (128) on file in the Hillsborough County Registry of Deeds at said Nashua, thence turning and running northeasterly by the said northeasterly line of said lot numbered forty-two (42) about eighty-five (85) feet to land now or formerly of Shea, thence turning and running northeasterly by said land of Shea about one hundred and thirty (130) feet to said Amherst Street, thence turning and running southeasterly by said Amherst Street about eighty-five (85) feet to the place of beginning. Containing about eleven thousand and twenty (11,020) square feet with buildings thereon being lots numbered forty (40) and forty-one (41) on said plan.

Meaning and intending to describe and convey the same premises conveyed to David Linatsas by deed of Elizabeth J. Linatsas pursuant to a Decree of Divorce in the Hillsborough County Superior Court - South, Docket No. 18-M-0615 and recorded in the Hillsborough County Registry of Deeds March 7, 2012 at Book 8403, Page 2717. See also: Deed from James Linatsas and Evanthea Linatsas dated October 3, 2002 and recorded in Book 4724, Page 1427. Hillsborough County Registry of Deeds.

This is not homestead property. No independent title examination has been done.

Prior Document

View Book/Page

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Plan Number

Images Available

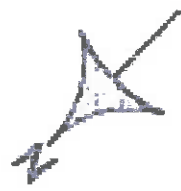
Books 0449 - 9206

Plan Numbers: 00001 - 40287



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AMHERST ST



After recording, return to:
Georgette Alexander
1 Amherst Terrace
Nashua, NH 03064

QUITCLAIM DEED

KNOW ALL MEN BY THESE PRESENTS, that, we, David Fisher, a married person,
and Georgette Alexander (f/k/a Georgette Fisher), a married person, for consideration
paid, grant to Georgette Alexander with a mailing address of 1 Amherst Terrace,
Nashua, New Hampshire, with QUITCLAIM COVENANTS, the following described
premises:

Two certain tracts of land at One Amherst Terrace, with the buildings thereon, situated in
Nashua, Hillsborough County, New Hampshire, bounded and described as follows:

Tract I:

Beginning at the junction of Amherst Street and Amherst Terrace on the westerly side of
Amherst Terrace and the southerly side of Amherst Street; thence

Westerly by said Amherst Street, eighty-six and 78/100 (86.78) feet, more or less, to a
stone bound; thence turning and running

Southerly fifty-eight and 85/100 (58.85) feet, more or less, to a stone bound; thence

Easterly by said land now or formerly of French, eighty-seven and 25/100 (87.25) feet,
more or less, to a stone bound at the place of beginning.

Tract II:

Beginning at a stone bound on the southerly side of Amherst Street; thence

Westerly two (2) feet, more or less, to said Amherst Terrace; thence

Southerly by said Amherst Terrace, sixty-five and 15/100 (65.15) feet, more or less, to a
point opposite the third bound in the above described lot of land; thence

Easterly two (2) feet, more or less; thence

Northerly sixty-five and 15/100 (65.15) feet, more or less, to a stone bound at the place of beginning.

Meaning and intending to describe and convey the same premises conveyed to the within Grantor by deed of Randy Karl Rethemeyer and Jodi Beth Kerper dated July 24, 2002, recorded with said Registry of Deeds at Book 6674, Page 910.

This is a non-contractual transfer and is exempt from transfer tax pursuant to divorce decree filed with the Hillsborough County Superior Court - South, Docket 05-M-0238.

By the acceptance of this deed the grantee assumes and agrees to pay the outstanding first mortgage to Wells Fargo, and/or its assignees, and any and all other liens and encumbrances except for the homeequity line of credit to Triangle Federal Credit Union, which David Fisher agrees to pay.

This is not the homestead property of David Fisher or his spouse.

WITNESS my hand this 7 day of June, 2011.
2016 of

[Signature]
Witness

[Signature]
Georgette Alexander

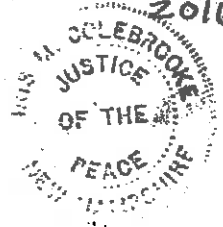
I, Clayton Alexander, husband of George Alexander, hereby release my homestead for the purposes of this transaction.

[Signature]
Witness

[Signature]
Clayton Alexander

STATE OF NEW HAMPSHIRE
COUNTY OF HILLSBOROUGH

The foregoing instrument was acknowledged before me this 7th day of June, 2011, by Georgette Alexander and Clayton Alexander.



[Signature]
Notary Public/Justice of the Peace
My commission expires: 06/04/2021

WITNESS my hand this 2nd day of December, 2011.

Witness

David Fisher

STATE OF NEW HAMPSHIRE
COUNTY OF HILLSBOROUGH

The foregoing instrument was acknowledged before me this 2nd day of
December, 2011, by David Fisher.

Notary Public/Justice of the Peace
My commission expires:

4/10/13

**FIDUCIARY DEED
WITH CONSENT**

We, Connie Grimes and Roger Payer, Nashua, Hillsborough County, State of New Hampshire, Co-Executors of the Will of Edith Payer Avar, and Roland Payer, heir of said Edith Payer Avar by the power conferred by the Hillsborough County Probate Court and every other power, for consideration paid, grant to DAVID W. SHERMAN, UNMARRIED 1 AMHERST TERRACE NASHUA, N.H. 03060 Hillsborough County, State of New Hampshire, as joint tenants, with right of survivorship, the following described premises:

The land at One Amherst Terrace, Nashua, County of Hillsborough, State of New Hampshire, bounded and described as follows:

Beginning at the junction of Amherst Street, and Amherst Terrace on the westerly side of Amherst Terrace and the southerly side of Amherst Street;

thence; Westerly by said Amherst Street eighty-six and 78/100 (86.78) feet, more or less, to a stone bound;

thence; turning and running southerly fifty-eight and 85/100 (58.85) feet, more or less to a stone bound at land of French; now or formerly

thence easterly by said land of French eight-seven and 25/100 (87.25) feet more or less, to a stone bound at the place of beginning.

Tract II

Beginning at a stone bound on the southerly side of Amherst Street;

thence; Westerly two (2) feet, more or less to said Amherst Terrace;

thence; Southerly by said Amherst Terrace sixty-five and 15/100 (65.15) feet more or less, to a point opposite the third bound in the above described lot of land; thence

thence; easterly two (2) feet, more or less, and

thence; northerly sixty-five and 15/100 (66.15) feet, more or less, to a stone bound at the place of beginning.

Meaning and intending to described a strip two feet wide on the said Amherst Terrace and directly opposite the line of Amherst Terrace of the above described property.

Meaning and intending to convey and hereby conveying the same premises conveyed by Estate of Donald J. Henderson, Administrator Catherine Crosby to Charles A. Payer and Edith C. Payer dated January 13, 1950 and recorded in the Hillsborough County Registry of Deeds in Book 1254, Page 110.

IN WITNESS WHEREOF, We have hereunto set my hand, this 9th day of October, 1992.

Witness [Signature]

Witness [Signature]

Witness _____

[Signature]
Connie P. Grimes

[Signature]
Roger Payer

X [Signature]
Roland Payer

CONSENT

We, the undersigned, legatees of Edith Payer Avarad hereby consent to the within conveyance.

Witness [Signature]

Witness [Signature]

Witness _____

[Signature]
Roger Payer

[Signature]
Connie Grimes

X [Signature]
Roland Payer

STATE OF NEW HAMPSHIRE
HILLSBOROUGH SS

On this, the 9th day of October, 1992, before me, the undersigned officer, personally appeared Connie Grimes and Roger Payer Co-Executors of the Will of Edith Payer Avarad, and as legatees of Edith Payer Avarad, known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument and acknowledged that they have executed the same for the purpose therein contained.

Before me,

[Signature]
NOTARY PUBLIC
DAVID J. BARRETT, JR.
My Commission Expires August 16, 1994

State of Florida
County of Orange

On this, the 2nd day of October, 1992, before me, the undersigned officer, personally appeared Roland Payer and acknowledged the foregoing to be his free act and deed.

Notary Public
Thomas Joseph McElroy
STATE OF FLORIDA
My Comm Exp 7/4/94
BONDED

Before me,

X [Signature]
Justice of the Peace

BK5377 PG0316

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING
September 24, 2019


A public hearing of the Zoning Board of Adjustment was held on Tuesday, September 24, 2019 at 6:30 PM in the Auditorium, 229 Main Street, at City Hall.

Members in attendance were:

JP Boucher, Chair
Steve Lionel, Vice Chair
Mariellen MacKay, Clerk
Nick Kanakis

Carter Falk, Deputy Planning Manager/Zoning

Mr. Boucher explained the Board's procedures, including the points of law required for applicants to address relative to variances and special exceptions. Mr. Boucher explained how testimony will be given by applicants, those speaking in favor or in opposition to each request, as stated in the Zoning Board of Adjustment (ZBA) By-laws. Mr. Boucher also explained procedures involving the timing light, as well as the projector in front of the stage for plans to show the audience.

- 
1. **David & Steven Linatsas, Trustee of the Linatsas Family Trust (Owner) Ali Bird (Applicant) 1 Hardy Street (Sheet 62 Lot 152) requesting use variance from Land Use Code Section 190-52 (A) for a fenced in area for outdoor use for a dog day care. LB Zone, Ward 4.**

TABLED FROM 9-10-19 MEETING

Voting on this case:

JP Boucher, Chair
Steve Lionel, Vice Chair
Mariellen MacKay, Clerk
Nick Kanakis

MOTION by Mr. Boucher to re-open the Public Hearing for this case, as it was tabled from the September 10, 2019 meeting, to specifically get information from the applicant on what the Board specifically asked for from the last meeting. He said that all the testimony from the previous meeting is incorporated

into the record. He said that there will be an opportunity for those speaking in favor or in opposition, with rebuttal specifically limited to what has been brought up this evening.

SECONDED by Mr. Lionel.

MOTION CARRIED UNANIMOUSLY 4-0.

Chris Guida, Fieldstone Land Consultants, 206 Elm Street, Milford, NH. Mr. Guida said that it's his understanding that one of the key issues was that the Board was looking for some sort of waste management plan, specifically the management of dog waste. He said that he understands that the Board received a copy of the WyshiWash product, that is an antibacterial cleaning product that you spray right on the area, although is not sure of the manufacturer's recommendations, but it will be applied per the instructions.

Mr. Guida said that the waste will be picked up immediately from the dog area, put in a closed container, double-bagged. He said that for hygienic reasons as well as proper management, it will be done right after the dogs go. He said that he is well aware of canine behavior.

Mr. Lionel asked about the dog urine, and it kills the grass quickly.

Mr. Guida said that they will dilute the area and spray it down, and the bacteria in the soil will help break it down.

Mr. Boucher asked about the future of the grassed outdoor area.

Mr. Guida said if the business is doing well, and there's a financial capability to install some sort of an AstroTurf, it would be done, perhaps within a couple years.

Mr. Boucher asked if the artificial turf be for the whole area.

Mr. Guida said it would be anywhere where the animals are isolated in would have the turf.

SPEAKING IN FAVOR:

Mr. Boucher said that for public testimony, it will be limited to what the applicant just spoke about. He said that all the other previous testimony is on the record.

Dave Mackie, 6 Indiana Drive, Nashua, NH. Mr. Mackie said he lives right across the street from where Ms. Bird is using the lot as a dog day care. He said that as soon as they moved in, the flowers and landscaping were updated and kept nice. He said that he hasn't had any issues with dogs or odors, and it's been a pleasure having her as a neighbor.

Richard Hookey, 8 Indiana Drive, Nashua, NH. Mr. Hookey said that he's never seen a dog loose, and has never heard the dogs barking. He said that odors haven't been an issue, and hasn't had any problems with her being there at all.

Mr. Boucher said that several letters of support were submitted, from Gina Bielawski, Debra Gleeson, Shawn St. Lee, Nicole LeBlanc, Sue Dolens, and Billy Brown, Lydia Foley. He said that all the letters are in the record.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

Judy Hogan, 71 Wason Avenue, Nashua, NH. Mrs. Hogan said that they strongly oppose the business at this location. She said that the same applicant was denied the same application back in May 2019 at 154 Amherst Street. She said that the Board should apply the same concerns to this application at this location as well, and deny this request. She said that in the last denial, the Board found that there are plenty of other businesses that could be supported at this site, and that the overall level of activity would be too much for that neighborhood. She said that the Board also found that the location of a dog day care could devalue and disturb the businesses as well as the homeowners nearby, also, that the use was contrary to the public interest, and substantial justice was served not to support it. She said that the Board should apply these same concerns to this site and deny the application. She said that the neighborhood should not be subjected to the noise, odors and destructive activity. She said that they also advertise dog boarding, and 24/7 activity.

Mrs. Hogan said that they visited four other dog day care facilities, and all were on industrial sites, with no neighborhoods to disrupt, and they are perfect locations for dog day cares. She said that this neighborhood needs to be kept

safe for everyone.

Clayton Alexander, 1 Amherst Terrace, Nashua, NH. [his testimony very difficult to make out from recording]. Mr. Alexander said that he has issues with waste disposal, runoff issues, disturbance and increased traffic coming to and from that location. He said that Ms. Bird submitted an almost identical waste management plan and got rejected and it included artificial turf. He said that they don't comply with Section 190-52 of the Ordinance, and believes that they need more variances to apply for, and they should have a 20-foot setback from adjoining property lines. He said that the backyard area will be very hard to keep clean, as it is not a hard concrete surface. He said that there is not a hardship here; this is not the right location. He said that there is already fair and reasonable use as commercial property.

Dan Hogan, 71 Wason Avenue, Nashua, NH. [his testimony was illegible from the recording].

Mr. Boucher said that the Zoning Board does not draw the zoning lines for the City; the Board is here to decide cases. He said that this property is the Local Business zone; it's not a residential zone. He said that the zoning line runs down the center of Amherst Terrace, and on the south side, it's zoned LB, and the north side is residential. He said that it has been this way for decades. He said that the only body that can change the zoning districts is the Board of Aldermen.

Mr. Lionel said that this is a permitted use, the only reason why the applicant is here is for the outdoor display or use, and City staff has determined that a variance is required for that issue. He said that a dog day care is a permitted use in this zone.

Mr. Hogan spoke but his testimony was illegible.

Alison Hogan, 7 Hardy Street, Nashua, NH. Ms. Hogan said that the property got changed over to business in 1983 when Dr. Linatsas got approval for the chiropractor use. She said that their long term plan does not address sufficient way to control the odor, as just hosing down the area will create a mess, the grass will deteriorate over time, and the runoff will go off site, and it will be an issue, which is against the public interest. She said that there is a concern that the odor will

cause an issue with property values, and said that she submitted information from a licensed real estate agent that did an assessment of the property, and the result was that it would affect the property values, it would result in a loss. She said that the applicant does not address property values, and does not address unnecessary hardship or public interest and the spirit of the ordinance, all of the statements are conclusory in nature, it is a logical fallacy. She said that the business will create noise and odors. She said that the application does not address the odor issue, and the burden of proof is on the applicant, it is not upon the abutters or residents. She said that they did not do their due diligence. She said that she is concerned for the health and safety of the dogs, and that there is an ordinance that if there is any noise between 10:00 p.m. and 6:00 a.m., the animal control officer can issue citations. *[her testimony was difficult to understand as well]*.

SPEAKING IN FAVOR - REBUTTAL:

Mr. Branon said that he heard a couple issues that were outside of what we are talking about tonight. He said that this is a permitted use, and to have a permitted use without bathroom facilities, is like a hotel room without a bathroom. He said that as far as odor goes, the staff will pick up the material, bagging it, and there is no odor when it's double-bagged and disposed of weekly. He said that the urine does not have an odor when it's sprayed down. He said that in winter conditions, it's actually easier to pick things up because the ground is frozen.

Mr. Branon said that the only time there is an odor issue is when you step in it, and get in your car in an enclosed space. He said he has dogs that go in his back yard, and there is no odor out there.

Mr. Branon said that he feels that a lot of people are confusing noise from a dog day care with a kennel, or breeder. He said that usually a barking dog is a single dog in someone's back yard. He said that people go to a dog day care so that they don't have their dog barking all day long, which is a benefit. He said that dogs communicate 95% of the time non-verbally, they wag their tails, and communicate through body language, not barking. He said that they bark when they're hungry or need something, and the facility strives to meet those issues, and pay attention to the animals, and keep them engaged. He said

that dogs just do not bark 24/7. He said that if there is such a dog barking like that, there is recourse, an abutter can call up and file a claim with the Police Department.

Mr. Branon said that sometimes, if you ask different real estate agents, you might get different answers. He said that he believes that there's some sort of a misunderstanding, and doesn't believe that noise will be an issue with this type of facility.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS - REBUTTAL:

Mr. Alexander said it's just the nature of the business, there will be noise issues and waste issues. He said that this just isn't the right location for this type of business. He said that the application is inadequate, they don't adequately address the problems. He said that the ordinance is just not adequate to regulate the outdoor area. He said that there isn't enough materials to review how they'll address the dogs outside will be regulated. He said that they should apply for several variances. He said that his office is right across the street, and will hamper his ability to do his job and conduct his business. He said that this just is not the right location. He said that the outdoor area for the dogs is just not the right area for this business.

Mr. Boucher said that there was credible testimony from both sides. He said that this is a difficult request, because it's a permitted use, and is questioning whether the plan is feasible the way it's laid out.

Mr. Lionel said that the only reason that they're here is for the outdoor area for the dogs, as staff has determined that it is outdoor display, which is not permitted except by variance. He said that the dog day care is permitted in this zone, it's clear in the ordinance. He said he keeps coming to the thought that this is a permitted use, and a lot of the objections seemed to be on the theoretical side. He said that his neighbors have two dogs, and they don't bark, they're outside a lot, and they're well trained. He said that he has another neighbor across the street that has a dog that barks all the time in their fenced back yard. He said that a properly cared for dog isn't going to be barking a lot. He said that they have a waste management plan that seems appropriate. He said that the Board recently approved a dog day care on West Hollis Street which was

also in the LB zone. He said that the applicant's last request was a use variance, as it was not a permitted use in that zone. He said in listening to the testimony and reviewing the case, he is in support.

Mrs. MacKay said that it is a permitted use, however, this is like a chair with three legs, it is in an area that abuts a residential zone, but this site is not zoned residentially. She said that she sympathizes with and understands the neighbors' concerns, she said that she listened to the neighbors who live next door to the applicants existing dog day care location, and they don't have the complaints, in fact, they'd love to keep them there as a neighbor. She said she has two dogs, and the only time they bark is if someone comes to the door, and generally, they don't bark. She said that she is in favor of the application.

Mr. Kanakis said that he is in favor as well, it is an allowed use within the zone, and a lot of the objections the Board heard were based upon the use, which is permitted. He said that the use fits within the zoning, and there is recourse for the noise.

Mr. Boucher said that this will be going to the Planning Board, and asked if there is anything that the Board should be aware of before it passes onto the Planning Board.

Mr. Falk said that the improvements on the site are already there, the driveway, buildings, and most all the fencing, the landscaping and utilities. It will be predominantly an as-built plan, and the applicant will have to identify the outdoor area for the dogs. The site data table will have to list all the dimensional criteria for the property, and identify the outdoor area on the plan. He said that the Zoning Board and Planning Board are two different Boards, with different roles and responsibilities as defined in the State of New Hampshire RSA's. He said that the Zoning Board looks at the use of the land, while the Planning Board looks at how the site functions. He said at this point, the Planning Board will be reviewing an as-built plan for the most part.

Mr. Boucher said that he's been on the fence, and Mr. Lionel's statements made sense, and is in support.

MOTION by Mr. Boucher to approve the request on behalf of the applicant as advertised. He said that the Board believes that

the variance is needed to enable the applicant's proposed use of the property, given the special conditions of the property, and the benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than the variance.

Mr. Boucher said that the Board feels that it is within the spirit and intent of the ordinance.

Mr. Boucher said that it would not negatively impact surrounding property values.

Mr. Boucher said that the request is within the public interest, and substantial justice is served.

SECONDED by Mr. Lionel.

MOTION CARRIED UNANIMOUSLY 4-0.

2. Joseph & Bernice Thomas (Owners) 5 Benton Drive (Sheet 56 Lot 49) requesting variance from Land Use Code Section 190-16, Table 16-3 to encroach 3.9 feet into the 10 foot required right side yard setback to construct an attached 12'x22' garage addition. RA Zone, Ward 3.

Voting on this case:

JP Boucher, Chair
Steve Lionel, Vice Chair
Mariellen MacKay, Clerk
Nick Kanakis

Joseph Thomas, 5 Benton Drive, Nashua, NH. Mr. Thomas said that their application is for a one-car addition, with an encroachment into the side yard setback, so it will be a two-car garage. He said that the encroachment would be 3.9 feet into the side. He said that they had the property surveyed by Meridian Land Surveyors, so there is an existing plan and a proposed plan. He said that they also submitted a plan that shows aesthetically what it would look like with the expansion.

Mr. Thomas said that the requested variance will not be contrary to the neighborhood, and will not be out of character. He said that Benton Drive is a quiet street, with only four houses, and they all have two-car garages.

Board members all expressed support for the application, saying it is very straightforward.

MOTION by Mr. Boucher to approve the variance application on behalf of the owner as advertised. He said that the Board believes that the variance is needed to enable the applicant's proposed use of the property, given the special conditions of the property, and the benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than the variance, he said that it's the last house on the street, it's a large lot, and an extra four feet on the garage is very minimal.

Mr. Boucher said that the Board feels that it is within the spirit and intent of the ordinance.

Mr. Boucher said that there is no indication that it would negatively impact surrounding property values.

Mr. Boucher said that the request is not contrary to the public interest, and substantial justice is served.

SECONDED by Mrs. MacKay.

MOTION CARRIED UNANIMOUSLY 3-0.

MISCELLANEOUS:

REHEARING REQUESTS:

BCM Environmental & Land Law, PLLC, for 1 Hardy Street, Nashua, NH.

Mr. Boucher said that before the Board gets into the rehearing requests, he'd like to discuss them. He asked whether or not the initial application should have even been to the Board, or if it even should have been heard. He said that it was the Planning Department's interpretation of the outdoor storage, and was it germane to this application, and the question is whether or not it should have even come to the Zoning Board. He asked if that rings a bell with anyone.

Mr. Lionel said that when the Board first heard this, he was really scratching his head about what we were being asked to

consider. He said the ordinance doesn't say dog day care, it says animal services. He said that by applying this retail display section to the dog day care is just truly weird. He said he was uncomfortable with the whole thing. He said that he is not sure that the Board did the right thing, and is sure that the Board did not do the right thing.

Mrs. MacKay agreed, she said it's not storage, and asked if the Board has the ability to challenge that decision. She said that she hopes that we do, and perhaps the right call was not made, and doesn't think that the Board should have heard it. She said she didn't think it should come here, it's a permitted use, absolute permitted use.

Mr. Lionel said that what we're being asked is do we want to have another go at this. He asked if it would be the same part of the ordinance that we would vote on.

Mr. Boucher said that the Planning Department does a fantastic job, however, sometimes the Board sees things differently. He asked what options the Board has at this point.

Mr. Falk said that the case was advertised for the outdoor storage, which was the closest code section we have for the outdoor area. He said that if the Board believes that by using that section was not proper or erroneous or not the best fit, because it is a permitted use in the Land Use Code for the zoning district. He said that permitted uses generally go straight to the Planning Board with a site plan. He said that he is not an attorney, but if the Board thinks that if that decision wasn't proper, that they don't even need to come to this Board, and can go straight to the Planning Board. He said that the Board has two rehearing requests, and if they are approved, they would be back to this Board, but the question is what would they be coming back for, something that is not proper?

Mr. Lionel said that there are other points in their requests, though.

Mr. Falk said that the Board can still go over them, though. He said that they are here for the outdoor storage, and if the Board determines if that wasn't the proper procedure, then it's a moot point.

Mr. Lionel said that they would fail item #1.

Mr. Falk said that the Board can still go over the four points, and answer them. He said that for example, the first point, if there was a procedural error, the Board could agree that there was a procedural error because this should not have come before the Board in the first place. He said that as far as the illegal decision, if the Board completely addressed the points of law for the variance or special exception, the Board could say that it is possibly not legal because they shouldn't have been here in the first place. He said that for the third point, the one about new information, both the requestors of the rehearings have questioned the outdoor storage, and it's explained in much more detail, and even the applicant questioned it. He said that for the fourth point, if there is anything that would or could cause the Board to make a different decision, the Board could say that it wasn't proper for them to be there in the first place.

Mr. Lionel asked that for a rehearing, is there a mechanism that the Board could say that this ordinance applies, and what would happen.

Mr. Boucher stated that if the Board goes through the points of the rehearing, and agrees that it shouldn't have come before the Zoning Board, and describe why, and asked if the rehearing request can still be denied, and should it come back to the Board.

Mr. Lionel said that the Board should just deny the request and they can go to the Planning Board.

Mr. Falk said that if the requests were approved, they wouldn't be able to come back here for about 30 days, and they've already been in the process for a while, and asked what they would come back for. He said that the rehearing requestors probably want this to come back to the Zoning Board but the bottom line is that if the Board thinks that it was not proper for them to come here in the first place, then they shouldn't be coming back here.

Mrs. MacKay said that the Board can deny the rehearing, it's a permitted use and it should go straight to the Planning Board.

Mr. Lionel said that for the outcome that we want to see, which is that this needs to go to the Planning Board and that the Zoning Board should not have taken this up, that we would deny the rehearing request, and the applicant still needs to go to the Planning Board, and the abutters have the opportunity to supply all this information that may be pertinent to that meeting. He said if the Board grants the rehearing request, they are back to square one with that retail display ordinance, that really doesn't fit, and doesn't see the point of doing that.

Mrs. MacKay agreed, she said that the Board should deny based on the fact that it's a permitted use, and belongs at the Planning Board.

Mr. Lionel said if there was an ordinance that was in our purview, that really mattered, then he would grant the rehearing request, because a lot of information that was not available at the time of the previous meeting has been supplied, allegations, but would certainly want the opportunity to examine them again, but given that the only thing we were asked to rule on is something that none of us think is applicable, then the proper response is to deny the requests, and have them go to the Planning Board, and the abutters can present their case to the Planning Board.

Mr. Boucher said that the Board has the right to change our decisions, and change our view.

Mr. Falk said that the Land Use Code is not easy to read, it is very complex.

Mrs. MacKay said that we are all human, and we recognize that, and we're rectifying it.

Mr. Boucher said that they will go over the rehearing request now from BCM Environmental Land Law.

Mr. Boucher asked if there was any procedural error, including improper notice, denying someone the right to be heard, etc. He said at this point, he believes that the Board shouldn't have heard this case under the code for the outside storage.

Mr. Lionel said that he doesn't think that there was any procedural error, in that we followed the rules, we did what we

were supposed to do, and doesn't believe that there was any reason to think that there was any improper notice, or that anyone was denied the right to be heard. He said his answer for item 1 is no.

Mr. Boucher said that the procedural error was that he didn't think that we should have had that in front of us.

Mr. Lionel asked if it is required for all of us to say no to all four of these points to not grant the rehearing request, or can we just write our reasons and make a motion to grant or deny the request.

Mr. Boucher said we go around to see where everyone is at, and then a motion is made, and that's what the final vote is, up or down.

Mr. Lionel said that the Board shouldn't have heard this.

Mrs. MacKay said that we should not have heard this.

Mr. Boucher agreed.

Mr. Boucher asked if it was an illegal decision, in other words, did the Board fail to completely address each of the points of law required for the special exception and/or variance. He said that if he believes that it shouldn't have been heard, then it's not a legal decision, and we're just coming back correcting that. He said the Board made a decision that doesn't hold any water, he said in his view it's not illegal or binding, but doesn't believe we should have heard it.

Mrs. MacKay said it's like the fruit of the poisonous tree doctrine, anything that was wrong at the inception, and any ensuing decision is based upon that first wrong issue, where we see it, we shouldn't have heard the case, and made decisions based upon what was in front of us then, now, we're saying it wasn't an illegal decision, but not correct.

Mr. Boucher said he feels that he made a decision that wasn't proper.

Mr. Lionel said that the Board followed the rules, and didn't think that the decision the Board made was made illegally, and that the fruit of the poisonous tree doesn't really reflect

here. He said that we feel that we did our jobs correctly, and followed the law.

Mr. Boucher said that it wasn't an illegal decision at the time we made it.

Mr. Lionel said that the Board followed the law.

Mr. Boucher asked if the request for rehearing contain any new information not presented or available to the Board at the original Public Hearing.

Mr. Lionel said absolutely it does.

Mr. Boucher said he believes so.

Mrs. MacKay agreed.

Mr. Boucher asked if there is anything that would/could cause the Board to make a different decision.

Mr. Lionel said yes, ignoring the fact that the Board shouldn't have heard it in the first place, but if it had been for a reason that was in our purview, given the new information that has been presented, if substantiated, would probably have made a different decision.

Mrs. MacKay agreed.

Mr. Boucher said he's on the fence with this, but it's not going to change his decision.

MOTION by Mr. Boucher on behalf of BCM Environmental & Land Law regarding 1 Hardy Street as advertised to deny the rehearing request based upon the discussions that the Board has had on this so far.

SECONDED by Mr. Lionel.

MOTION CARRIED UNANIMOUSLY 3-0.

Mr. Boucher said that there is another rehearing for the same owner, from Clayton and Georgette Alexander, for the case at 1 Hardy Street.

Mr. Boucher said that we can refer from the same discussion.

Mr. Falk said that they brought up some different points, but the end result will be the same.

Mr. Lionel said that his answers to the first one would apply to the second one.

Mr. Boucher said that his answers would also apply.

Mrs. MacKay said so would hers.

MOTION by Mr. Boucher to deny the rehearing request relative to the case at 1 Hardy Street, again, for all the discussions that the Board had, and for the same reasoning's why we denied the previous rehearing request for the same property.

SECONDED by Mr. Lionel.

MOTION CARRIED UNANIMOUSLY 3-0.

MINUTES:

10-22-19:

MOTION by Mr. Boucher to approve the minutes as presented, waive the reading, and place the minutes in the permanent file.

SECONDED by Mrs. MacKay.

MOTION CARRIED UNANIMOUSLY 3-0.

REGIONAL IMPACT:

The Board did not see any cases of Regional Impact for the 11-26-19 Agenda.

MEETING DATES FOR 2020:

MOTION by Mr. Boucher to approve the 2020 meeting and deadline dates.

SECONDED by Mr. Lionel

MOTION CARRIED UNANIMOUSLY 3-0.

ADJOURNMENT:

Mr. Boucher called the meeting closed at 9:44 p.m.

Submitted by: Mrs. MacKay, Clerk.

CF - Taped Hearing

OLD BUSINESS - CONDITIONAL/SPECIAL USE PERMITS

None

OLD BUSINESS - SUBDIVISION PLANS

None

OLD BUSINESS - SITE PLANS

1. Linatsas Family Trust (Owner) Ali Bird (Applicant) - Proposed dog day care and boarding facility. Property is located at 1 Hardy Street. Sheet 62 - Lot 152. Zoned "LB" Local Business. Ward 4. **[TABLED FROM THE OCTOBER 17, 2019 MEETING]**

MOTION by Mr. Varley to remove Case #1 from the table

SECONDED by Ald. Melizzi-Golja

MOTION CARRIED 7-0

MOTION by Mr. Varley to reopen the public hearing

SECONDED by Mr. Bollinger

MOTION CARRIED 7-0

Chad Branon, Project Engineer, Fieldstone Land Consultants, 206 Elm St, Milford NH

Mr. Branon introduced himself to the Board as representative for the owner.

Mr. Branon said their previous appearance before the Board on October 17th concluded with some questions pertaining to zoning interpretations and abutting ownership of land, specifically a 2-ft strip of land on the south side of Amherst Terrace.

Mr. Branon addressed the Zoning Board of Adjustment (ZBA) interpretation. The ZBA reviewed two rehearing requests for the case on November 12th, at which time the Board decided that Section §190-52, pertaining to outdoor storage, should not apply to a dog daycare use. As such, he believes that all of the items that this Board was concerned about pertaining to setbacks and impervious surfaces are no longer applicable to this

application, because it is no longer considered an outdoor storage area.

Mr. Branon said their surveyors performed some research on the abutting roadway. The city surveyor, Mark Jennings, recovered a plan from 1928 that depicted the 2-ft wide strip to the rear of 1 Hardy St. He said this plan is only located at the City Engineering Dept. office, is not stamped, and has not been recorded. They were not able to find any documentation related to the City's adoption of Amherst Terrace. They could not find anything to contest the abutter's claim, but they also didn't find substantial evidence supporting it.

Mr. Branon said that with the Engineering Dept. they performed a registry chain of title and Right of Way plan search on the lot in question, 1 Amherst Terrace. There was evidence of the 2-ft strip being referenced in deeds back to the creation of the property. He said typically when cities or towns accept roadways they don't allow for strips of land to occur, and are often amalgamated into the right of way. When the ZBA ruled that this was not a display area, they stopped their research efforts. If they find evidence that supported this 2-ft swath, it would turn the subject property's front 10-ft setback into a 7-ft side setback. They left the plan showing a front setback to err on the side of caution, but the setback only pertained to its classification as a display area. Since that no longer applies to the dog daycare use, there is no setback.

Mr. Branon said they are requesting a waiver from NRO § 190-279 (EE), which requires an existing conditions plan within 1,000-ft of the site. They have no objections to Staff comments.

Mr. LeClair asked if the 2-ft strip along Amherst Terrace was part of the neighbor's lot, is there anything in the current plan that is on the strip of land.

Mr. Branon said no. The fence is onsite. Everything is represented on the plan correctly as it pertains to their property. There is no evidence to support the swath other than a notation on the deed, and there's no evidence to discount it. They city doesn't acknowledge it as a separate parcel on any of their maps. There are no violation issues from the potential 2-ft swath of land adjacent to their property.

Mr. LeClair said it's currently represented on the plan as roadway.

Mr. Branon said this is consistent with the city maps. Even utility maps don't show a 2-ft swath of land. Normally you would find this information when the city accepts the road. Whether that swath exists or not doesn't change the proposal.

Mr. LeClair asked Mr. Branon to outline the location of the land strip.

Mr. Branon described the location and extent on the plan.

Mr. Pedersen asked Staff if there was a need for setbacks for this particular business from the backyard neighbor.

Ms. McGhee said no. Based on the rehearing request that went before the ZBA, the Zoning Board felt that NRO \$190-52 did not apply, so there would be no setback required. There are no setbacks for fences, so they would be in compliance.

Mr. Pedersen asked if they were in agreement with the applicant and the ZBA on the setbacks.

Ms. McGhee said correct.

Mr. Pedersen asked the applicant to describe the final plan for fencing.

Mr. Branon said they are proposing the same wooden stockade fence, 6-ft high. He indicated the locations of new fencing to be installed. He presented photos of the design.

Mr. Pedersen asked who the current owner is, and if it's for sale, who will own it when the business starts.

Mr. Branon said the current owner is David & Steven Linatsas. If the plan is approved, the owner will be Ali Bird. She plans on residing in the house.

Mr. Pedersen asked if it was currently not owned by the applicant.

Mr. Branon said correct.

Mr. Pedersen asked about the plan for picking up and dropping off dogs for daycare. Would the clients have guidance on how to avoid creating traffic jams?

Mr. Branon said absolutely. He described the parking requirements and onsite parking. He said the applicant has no issues at her current location, and this location will have more space. The site meets all design guidelines. He presented photos of the site.

Mr. Pedersen asked if the proposed drop-off is on the Hardy St side of the property.

Mr. Branon said yes.

SPEAKING IN OPPOSITION OR CONCERN

Clayton Alexander, 1 Amherst Terrace, Nashua NH

Mr. Alexander disagreed with Mr. Branon's statement that the 2-ft strip is inconclusive, and stated it is on the deed. He said the right of way doesn't affect the property line. He said there was a dispute with the previous owner over parking and exiting on their 2-ft swath. He said the GIS map online has a disclaimer that it is not a legally binding description, and that the 2-ft strip is not shown because they consider it too small to tax. According to the deeds, everyone on Amherst St owns that 2-ft strip.

Mr. Alexander said their rehearing request was denied by the ZBA. He thinks the Board's decision was illegal and unreasonable, and is appealing it to the Superior Court. He said he asked repeatedly from the Planning Dept. for clarification on the applicability of NRO §190-52 to the site plan, and hasn't received any. He said he's reasonably relied on the city's representation so far, but isn't sure if they're correct or complete. He objects to this and said this violates his due process rights. He asserted municipal estoppel as well.

Mr. Alexander said the ZBA did not actually rule that NRO §190-52 was not applicable, and that they left it up to the Planning Board to decide. He quoted Deputy Zoning Manager Carter Falk's clarification to the ZBA regarding NRO §190-52. He said the ZBA has not formally vacated the decision, and simply denied the request. He said the ZBA hasn't granted any additional relief from applying NRO §190-52 to the site plan. He said any ZBA decision only relates to property use, and has nothing to do with the site plan. He cited NRO §190-146 and how he thinks NRO §190-52 applies.

Mr. Alexander requested that the Board regulate and stipulate this use to the fullest extent of their authority, regarding the requirements of NRO §190-52, waste management, noise control, and number of dogs. He cited the restrictions outlined in the Urban Chicken Ordinance, NRO §190-31.1, and said it's unreasonable not to have similar regulations for dogs.

Mr. Alexander raised concerns that the subject property is on two lots, and reiterated the application of NRO §190-52. He said one lot is only being used residentially. He said even if an outdoor area in general is permitted under the Use Matrix, there is nothing permitting the use of the residential lot for the area location. He said the original variances granted in 1983 and 1987 state two adjoining plots of land, and were granted in respect to one non-residential lot. He said nothing permits this outdoor area for commercial use to be located on the residential lot. He thinks it's legally and physically impossible to construct this area as proposed.

Mr. Alexander said the applicant plans to follow the industry standard of 75-ft per dog, and believes the area is too small for this. He requested the Board stipulate hours of operation.

Mr. Alexander reiterated his concerns from the previous meeting.

Mr. LeClair asked Mr. Alexander to not repeat what has already been said.

Mr. Alexander presented a Material Safety Data Sheet for Wyshiwash.

Mr. Pedersen asked if in his understanding, the dogs will not be in the house, only in the one-story structure.

Mr. Alexander said they've been told the house is only going to be used residentially, and the boarding is going to take place in the converted garage.

SPEAKING IN FAVOR

Colleen Bird, 5 Indiana Dr, Nashua NH

Ms. Bird introduced herself as the mother of the applicant. She works part time for the business.

Ms. Bird said the applicant has been running her business in a residential neighborhood for almost a year, and never had any complaints. She described their management of the dogs. They have been trying to move to an approved zone for dog daycare for a year. She described their business model.

Ms. Bird described their waste management technique. She said waste is picked up immediately, and there is no smell. She described the challenges they have been facing due to weather and delays. She went into detail on the growing need for dog daycares. She requested the Board not stipulate short hours of operation, and described the dog drop-off process.

Ms. Bird said she collected signatures from local businesses in the vicinity of Hardy Street who believe the area would benefit from a dog daycare. She cited the amount of dog daycares in the city, and said they are at capacity.

SPEAKING IN FAVOR - REBUTTAL

Chad Branon, Project Engineer, Fieldstone Land Consultants, 206 Elm St, Milford NH

Mr. Branon said there is the presentation that there will be lots of barking dogs, but the evidence speaks for itself. Neighbors of the existing business have complimented the applicant on how she operates, and there is no evidence of complaints.

Mr. Branon quoted the abutter's rehearing request, and said it stated that NRO §190-52 is inapplicable to a dog daycare. He said that is exactly what the Zoning Board determined on November 12th. He quoted the ZBA decision letter, and said NRO §190-52 does not apply because dogs are not a good, ware, or merchandise. He said this is an essential part of a permitted use in the zone. He asked how you could have a dog daycare and not let the dogs outside.

Mr. Branon disagreed that there would be a lot of noise. He said dogs bark when alone, and part of Ms. Bird's business model is to have someone there with the dogs. He said this would not be a kennel situation. He said the notion that this would be a noisy site is a mischaracterization. He said that the streets bordering their property create a significant distance between the business and other uses. He said the current owner told them that building was insulated to a high level in 1958 because they

ran machines inside the building. The plate glass window faces Hardy St, not towards the abutter who raised concerns.

Mr. Branon addressed the deed and 2-ft strip. He said they do a lot of work with right-of-ways, and private right-of-way neighborhood petitions for the city to take over the private street. The abutting deeds mention a 2-ft strip, but that was when the property originated as a private road. Oftentimes those descriptions in a deed will get carried forward, and errors can be carried forward for more than 60-70 years. The 2-ft strip in the deed means nothing, because there was a change in ownership of the road in between the two properties. When the city took the road over, there is a chance that the city absorbed that land into the right of way. That's typically what a city or town would do. Unfortunately the city couldn't provide that data to them. He said it's not important because it doesn't have an impact on what they are proposing.

Mr. Branon said they don't rely on tax maps and the online GIS information. Neither of those maps show a tax map parcel. But none of the utility maps show a parcel either. He reiterated that the 2-ft strip is not relevant to the application because there are no setback issues. He said they have applied all land use codes pertinent to the case.

Mr. Branon addressed Wyshiwash. He said it's biodegradable and environmentally friendly. He said it's the same chemical that Chewie's Playland presented when they got appeared before the Board, which was approved. He referred to potential stipulations, and said there have never been any limitations put on similar uses. They have openly shared their business plan for the site.

Mr. Branon said the city shows this as one tax map parcel. He thinks they meet all the regulations as it pertains to the setbacks and that it is shown correctly on the plan.

Mr. Bollinger asked for clarification on Stipulation #6 regarding work in the right of way, and asked if they agreed with it given that there is potentially no official record of the right of way being delineated.

Mr. Branon said they aren't proposing work offsite.

SPEAKING IN OPPOSITION OR CONCERN - REBUTTAL

Clayton Alexander, 1 Amherst Terrace, Nashua NH

Mr. Alexander believes that Ms. Bird's comments were irrelevant to the application.

Mr. Alexander said there are a lot of legal issues here. He cited the Land Based Use Code definition of animal pet services. He said the city required a variance specifically for the outdoor area, and that the assumption there is the outdoor space is not permitted. He said they agree that a variance was necessary. They argued in their rehearing request that the code section wasn't applicable because it has to do with retail goods and merchandise, but there is no available remedy to seek a variance for an outdoor dog area. He referred to the chicken ordinance, and said there is no regulation on dog daycares at all. He believes that if it's not explicitly permitted in the code, it should be prohibited. He said there is nothing specifically permitted these outdoor areas.

Mr. Alexander said there are plenty of businesses under the use of animal pet services that don't require an outdoor pet area. He thinks it is inconsistent to apply NRO §190-52 to Chewie's Playland and not this application. He explained in detail his opinion of what an outdoor area in an LB zone should be. He said he thinks only shielded and buffered dumpsters should be allowed, and said it's reasonable to ask the same kind of regulation here. He said it's unreasonable that chickens are more regulated than dogs. He said there is no clear legal Branonnce, and it should not be allowed.

Mr. Alexander said he doesn't expect the Board to be the arbiter of deeds.

Mr. LeClair said they are not.

Mr. Alexander gave a synopsis on the history of their ownership of the 2-ft strip of land. He doesn't believe the burden falls on him to prove that it's his deed.

Mr. LeClair said they understand the 2-ft strip confusion.

Mr. Alexander said something has to be done to regulate this.

Mr. LeClair asked Staff if their understanding is that the dog daycare is a permitted use.

Ms. McGhee said correct, it is a permitted use in the LB zone. She said if they decide to approve the proposal, stipulation #5 can be deleted. They received a letter of satisfaction from the Fire Marshall. Stipulation #4 can be updated to reflect new comments, from a letter dated October 10th.

Mr. LeClair closed the public hearing and moved into the public meeting.

Mr. LeClair summarized the hearing discussion. He addressed the 2-ft strip, and said in his understanding it is in the roadway.

Mr. Varley said in his view they received appropriate clarification. The use proposed here is clearly permitted in the Land Use Code Matrix. They asked for zoning clarification, and procedural issues notwithstanding, he thinks the ZBA responded clearly that they believe they made a mistake in taking the case in the first place, that a variance is not required, and that it is a permitted use. He thinks that is entirely consistent with NRO §190-52, which as both the applicant and abutter spoke, acknowledged really doesn't apply to this use.

Mr. Varley said to the point of the 2-ft land strip, absent the application of some kind of setback requirement it becomes irrelevant. It's really a private property dispute matter, beyond the scope of what the Planning Board considers. He said neither of these issues are particularly relevant, and they should consider the site plan on the merits as a permitted use including the outdoor use. In his view there is no indication in the Use Matrix or otherwise that would suggest a restriction on outdoor use.

Mr. Pedersen agreed with Mr. Varley. He said the abutter, Mr. Alexander, stated he would take this to Superior Court. He asked if they should let his future actions affect their decision.

Mr. LeClair said he doesn't think that is material with this Board. The abutter obviously has the right to do what they want.

Mr. Varley agreed with Mr. LeClair. It's within the abutter's right to appeal the ZBA's decision, but he doesn't think that is a basis for determining what course of action this Board takes. They have to take the action they feel is appropriate under the ordinance. The affected party always has a right to appeal.

Mr. Pedersen led a brief discussion of Note #18, regarding work within the right of way.

Ms. McGhee clarified that if the applicant is doing work within the right of way, staff will meet with them beforehand for internal review.

Ms. Harper said anyone could move in and have ten dogs, and put whatever they want in the backyard. This particular business has a great business plan, and she would rather have this next door than someone who has ten dogs sitting outside barking all day, not being monitored.

Mr. Varley agreed with Ms. Harper. He said most people consider chickens not to be pet animals, but farm animals, and chickens were not a permitted use until the recent ordinance change. He thinks there is a distinction. Here they have pet services, clearly a permitted use, as the abutter himself acknowledged. That includes boarding of pets. He said the applicant seems to have taken appropriate precautions, seems to be doing this thoughtfully, and has experience. He said they will be subject to all of the ordinances that apply, including noise ordinances, and if there is a problem he thinks that is the appropriate manner for addressing it.

Mr. LeClair addressed the waiver request regarding existing conditions, and said it was pretty standard.

MOTION by Mr. Varley to approve Old Business - Site Plan #1. It conforms to § 190-146(D) with the following stipulations or waivers:

1. The request for a waiver of § 279 (EE), which requires an existing conditions plan showing physical features on site and on adjacent parcels plan, is granted, finding that the waiver will not be contrary to the spirit and intent of the regulations.
2. Prior to the Chair signing the plan, minor drafting corrections will be made to the plan.
3. Prior to the Chair signing the plan, all conditions from the Planning Board approval letter will be added to the cover page of the final mylar and paper copies submitted to the City.

4. Prior to the chair signing the plan, all comments from Joe Mendola, Street Construction Engineer dated October 10, 2019 shall be addressed to the satisfaction of the Engineering Department.
5. Any work within the right-of-way shall require a financial guarantee.

SECONDED by Mr. Weber

MOTION CARRIED 7-0

NEW BUSINESS - CONDITIONAL/SPECIAL USE PERMITS

None

NEW BUSINESS - SUBDIVISIONS

None

NEW BUSINESS - SITE PLANS

2. Weston Associates (Owner) - Application and acceptance of proposed site plan amendment to NR1103 to demolish existing structures onsite and create two new retail plaza buildings. Property is located at 546 Amherst Street. Sheet H - Lot 178. Zoned "GB" General Business and "PI" Park Industrial. Ward 2. **[POSTPONED TO THE DECEMBER 5, 2019 MEETING]**
3. John J. Flatley Company (Owner) - Application and acceptance of proposed site plan to construct a 255,272 square foot Research & Development facility. Property is located at 100-300 Innovative Way. Sheet A - Lot 798. Zoned "PI" Park Industrial and "RC" Urban Residence. Ward 8. **[POSTPONED TO THE MAY 21, 2020 MEETING]**

OTHER BUSINESS

1. Review of tentative agenda to determine proposals of regional impact.

MOTION by Mr. Bollinger that there are no items of regional impact.

SECONDED by Mr. Varley

MOTION CARRIED 7-0